
STATE OF CALIFORNIA
COMMISSION ON JUDICIAL PERFORMANCE



2000 ANNUAL REPORT

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COMMISSION ON JUDICIAL PERFORMANCE

2000 ANNUAL REPORT

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INTRODUCTION



Among other milestones, the year 2000 marked the fortieth anniversary of the establishment of the Commission on Judicial Performance. With California voters' approval of Proposition 10 – the "Administration of Justice" measure – in the November 1960 election, the nation's first permanent disciplinary body for judicial officers was established. Provided for under Article VI of the California Constitution, the Commission was designed to be an independent body in the judicial branch that would afford oversight of the state's judiciary. At the outset, the Commission was only an investigative body; the sole disciplinary sanction was removal from office, which was imposed by the California Supreme Court upon recommendation by the Commission. The Commission's membership included five judges, two lawyers and two citizen members. All proceedings, including investigations and hearings, were confidential until a removal recommendation was made to the Supreme Court.

The last forty years have brought substantial change, both to California's Commission and in the emergent field of judicial discipline. As confidence in California's system grew, five successive constitutional amendments over the past four decades expanded the Commission's authority and strengthened the disciplinary system. California's success led to the adoption of similar systems in other states. Today, there are judicial disciplinary systems in all fifty states and in the District of Columbia, many of which were initially modeled after "The California Plan."

As it begins its fifth decade of service, California's Commission remains on the forefront of change. This year the Commission established a Web site in order to increase the public's access to information about the Commission and its work. That site [<http://cjp.ca.gov>] provides postings of all Commission decisions, public announcements and background information.

While the years have brought many changes, the Commission's mandate has remained constant: to uphold public confidence in the judiciary through the enforcement of high standards of conduct for judges. Since its establishment, 90 persons have served as members of the Commission, including 41 judges, 21 lawyers and 28 citizens. Receiving only reimbursement for their expenses, these individuals have worked selflessly and tirelessly to fulfill the Commission's mandate.

It has been a privilege to serve as the Commission's 14th Chair. I would like to thank the members for their hard work and dedication. I would also like to thank our Director-Chief Counsel Victoria Henley and our Commission Counsel Richard Schickele and each member of the Commission Staff for their dedication to the Commission's purpose.

A handwritten signature in dark ink, appearing to read "Daniel M. Hanlon". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Honorable Daniel M. Hanlon
Chairperson

COMPOSITION OF THE COMMISSION

Pursuant to California Constitution, article VI, section 8, the Commission is composed of eleven members: one justice of a court of appeal and two trial court judges, all appointed by the Supreme Court; two attorneys appointed by the Governor; and six lay citizens, two appointed by the Governor, two appointed by the Senate Committee on Rules and two appointed by the Speaker of the Assembly. Members are appointed to staggered four-year terms. The members do not receive a salary but are reimbursed for expenses relating to Commission business. The members of the Commission elect a chairperson and vice-chairperson annually.

COMMISSION MEMBERS - 2000



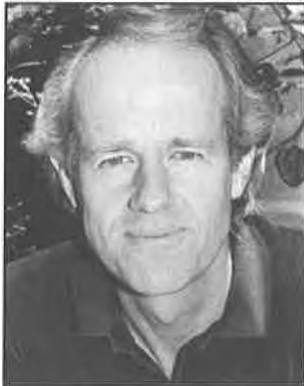
**HONORABLE
DANIEL M. HANLON**
Chairperson
Justice, Court of Appeal
Appointed by the Supreme Court
Appointed: March 1, 1997
Retired: December 31, 2000



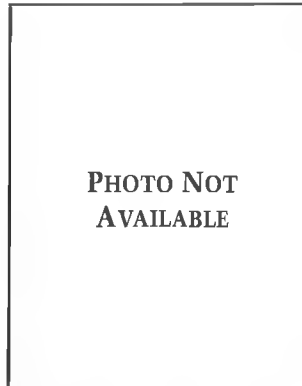
MICHAEL A. KAHN, ESQ.
Vice-Chairperson
Attorney Member
Appointed by the Governor
Appointed: March 1, 1999
Term Ends: February 28, 2003



MS. LARA BERGTHOLD
Public Member
Appointed by the Governor
Appointed: April 15, 1999
Term Ends: February 28, 2003



MR. MIKE FARRELL
Public Member
Appointed by the
Senate Committee on Rules
Appointed: February 2, 1998
Term Ends: February 28, 2001

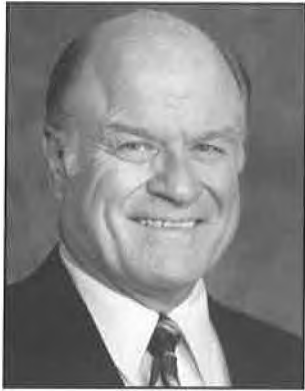


**HONORABLE
MADELEINE I. FLIER**
Judge, Superior Court
Appointed by the Supreme Court
Appointed: March 3, 1999
Reappointed: March 1, 2001
Term Ends: February 28, 2005



MRS. GAYLE GUTIERREZ
Public Member
Appointed by the
Senate Committee on Rules
Appointed: April 5, 2000
Term Ends: February 28, 2003

COMMISSION MEMBERS



PATRICK M. KELLY, ESQ.
Attorney Member
Appointed by the Governor
Appointed: March 1, 1995
Reappointed: March 1, 1997
Term Ends: February 28, 2001



MRS. CRYSTAL LUI
Public Member
Appointed by the
Speaker of the Assembly
Appointed: April 9, 1999
Term Ends: February 28, 2003



**HONORABLE
RISE JONES PICHON**
Judge, Superior Court
Appointed by the Supreme Court
Appointed: March 3, 1999
Term Ends: February 28, 2003



MS. RAMONA RIPSTON
Public Member
Appointed by the
Speaker of the Assembly
Appointed: July 15, 1998
Reappointed: March 1, 2001
Term Ends: February 28, 2005

VACANT POSITION
Public Member
Appointed by the Governor

OUTGOING MEMBER

MS. JULIE SOMMARS
Public Member
Appointed by the
Senate Committee on Rules
Appointed: March 1, 1999
Resigned: April 5, 2000

INCOMING MEMBER

HONORABLE VANCE W. RAYE
Justice, Court of Appeal
Appointed by the Supreme Court
Appointed: January 1, 2001
Reappointed: March 1, 2001
Term Ends: February 28, 2005

I.

OVERVIEW OF THE COMPLAINT PROCESS



THE AUTHORITY OF THE COMMISSION ON JUDICIAL PERFORMANCE

The Commission on Judicial Performance is the independent state agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges (pursuant to article VI, section 18 of the California Constitution). Its jurisdiction includes all active California judges. The Commission also has authority to impose certain discipline on former judges and the Commission has shared authority with local courts over court commissioners and referees. In addition, the Director-Chief Counsel of the Commission is designated as the Supreme Court's investigator for complaints involving State Bar Court judges. The Commission does not have authority over judges pro tem or private judges. In addition to its disciplinary functions, the Commission is responsible for handling judges' applications for disability retirement.

This section describes the Commission's handling and disposition of complaints involving judges. The rules and procedures for complaints involving commissioners and referees and statistics concerning those matters for 2000 are discussed in Section V, Subordinate Judicial Officers.

HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION

Anyone may make a complaint to the Commission. Complaints must be in writing. The Commission also considers complaints made anonymously and matters it learns of in other

ways, such as news articles or information received in the course of a Commission investigation.

JUDICIAL MISCONDUCT

The Commission's authority is limited to investigating alleged judicial misconduct and, if warranted, imposing discipline. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Ethics (see Appendix 1E). Examples of judicial misconduct include intemperate courtroom conduct (such as yelling, rudeness, or profanity), improper communication with only one of the parties in a case, failure to disqualify in cases in which the judge has or appears to have a financial or personal interest in the outcome, delay in performing judicial duties, and public comment about a pending case. Judicial misconduct also may involve improper off-the-bench conduct such as driving under the influence of alcohol, using court stationery for personal business, or soliciting money from persons other than judges on behalf of charitable organizations.

WHAT THE COMMISSION CANNOT DO

The Commission is not an appellate court. The Commission cannot change a decision made by any judicial officer. When a court makes an incorrect decision or misapplies the law, the ruling can be changed only through appeal to the appropriate reviewing court.

The Commission cannot provide legal assistance to individuals or intervene in litigation on behalf of a party.

I.
OVERVIEW OF THE COMPLAINT PROCESS

**REVIEW AND INVESTIGATION
OF COMPLAINTS**

Complaints about judges are reviewed and analyzed by the Commission's legal staff. When the Commission meets, it decides upon the action to take with respect to each complaint.

Many of the complaints considered by the Commission do not involve judicial misconduct. These cases are closed by the Commission after initial review.

When a complaint states facts which, if true and not otherwise explained, would be misconduct, the Commission orders an investigation in the matter. Investigations may include interviewing witnesses, reviewing court records and other documents, and observing the judge while court is in session. Unless evidence is uncovered which establishes that the complaint lacks merit, the judge is asked to comment on the allegations.

ACTION THE COMMISSION CAN TAKE

Confidential Dispositions

After an investigation, the Commission has several options. If the allegations are found to be untrue or unprovable, the Commission may close the case without action against the judge. If, after an investigation and opportunity for comment by the judge, the Commission determines that improper or questionable conduct did occur, but it was relatively minor, the Commission may issue an advisory letter to the judge. In an advisory letter, the Commission will advise caution or express disapproval of the judge's conduct.

When more serious misconduct is found, the Commission may issue a private admonishment. Private admonishments are designed in part to bring problems to a judge's attention at an early stage in the hope that the misconduct will not be repeated or escalate. A private admonishment

consists of a notice sent to the judge containing a description of the improper conduct and the conclusions reached by the Commission.

Advisory letters and private admonishments are confidential. The Commission and its staff ordinarily cannot advise anyone, even the person who lodged the complaint, of the nature of the discipline that has been imposed. However, the Commission's rules provide that upon completion of an investigation or proceeding, the person who lodged the complaint will be advised either that the Commission has closed the matter or that appropriate corrective action has been taken. The California Constitution also provides that, upon request of the governor of any state, the President of the United States, or the Commission on Judicial Appointments, the Commission will provide the requesting authority with the text of any private admonishment or advisory letter issued to a judge who is under consideration for a judicial appointment.

A description of each advisory letter and private admonishment issued in 2000, not identifying the judge involved, is contained in Section IV, Case Summaries.

Public Dispositions

In cases involving more serious misconduct, the Commission may issue a public admonishment or a public censure.

The nature and impact of the misconduct generally determine the level of discipline. Both public admonishments and public censures are notices that describe a judge's

improper conduct and state the findings made by the Commission. Each notice is sent to the judge and made available to the press and the general public.

In the most serious cases, the Commission may determine – following a hearing – to remove a judge from office. Typically, these cases involve persistent and pervasive misconduct. In

ACTION THE COMMISSION CAN TAKE

Close (Dismissal)
Advisory Letter
Private Admonishment
Public Admonishment
Public Censure
Removal or Involuntary Retirement

I.
OVERVIEW OF THE COMPLAINT PROCESS

cases in which a judge is no longer capable of performing judicial duties, the Commission may determine – again, following a hearing – to involuntarily retire the judge from office. In cases in which the conduct of a former judge warrants public censure, the Commission also may bar the judge from receiving assignments from any state court.

A judge may petition the Supreme Court to review an admonishment, censure, removal or involuntary retirement determination.

CONFIDENTIALITY

Under the California Constitution and the Commission Rules, complaints to the Commission and Commission investigations are confidential. The Commission cannot ordinarily confirm or deny that a complaint has been received or that an investigation is under way. Persons contacted by the Commission during an investigation are advised regarding the confidentiality requirements.

At such time as the Commission orders formal proceedings, the matter becomes public. The charges and all subsequently filed documents are made available for public inspection. Any hearing on the charges is also public.

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES



LEGAL AUTHORITY

Recent Changes In The Law

In 2000, the Supreme Court amended canon 3E of the Code of Judicial Ethics. The Commission adopted amendments to certain rules and policy declarations. All of these changes are discussed below.

California Constitution, Government Code, and Code of Civil Procedure Section 170.9

The Commission on Judicial Performance was established by voter referendum in 1960. The Commission's authority is set forth in article VI, sections 8, 18, 18.1 and 18.5 of the California Constitution. In 1966, 1976, 1988, 1994 and most recently in 1998, the Constitution was amended to change various aspects of the Commission's work.

The Commission also is subject to Government Code sections 68701 through 68755. Commission determinations on disability retirement applications are governed by Government Code sections 75060 through 75064 and sections 75560 through 75564.

In addition, the Commission is responsible for enforcement of the restrictions on judges' receipt of gifts and honoraria, set forth in Code of Civil Procedure section 170.9. For 2000, the gift limitation amount was \$270, as adjusted by the Commission pursuant to Code of Civil Procedure section 170.9.

The provisions governing the Commission's work are included in Appendix 1.

Commission Rules and Policy Declarations

Article VI, section 18(i) of the Constitution authorizes the Commission to make rules for conducting investigations and formal proceedings.

Commission Rules 101 through 138 were adopted by the Commission on October 24, 1996, and took effect December 1, 1996. Rule 108(a) and (b) and rule 119(b) were amended January 26, 2000.

The Commission's internal procedures are further detailed in declarations of existing policy issued by the Commission. The Commission's Policy Declarations were substantially revised in 1997. Changes to Policy Declarations 5.1, 5.2 and 5.4 regarding disability retirement applications were approved on June 21, 2000.

The Commission Rules and Policy Declarations are included in Appendix 1 B and C, with the dates of adoption or approval and the dates of any amendments.

Code of Judicial Ethics

The Constitution requires the Supreme Court to make rules "for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns," to be referred to as the "Code of Judicial Ethics" (California Constitution, article VI, section 18(m)). The Supreme Court adopted the Code of Judicial Ethics effective January 1996. Canon 3E, relating to the disqualification of appellate justices, was amended December 13, 2000.

The California Code of Judicial Ethics is included in Appendix 1 E.

COMMISSION PROCEDURES

Commission Review of Complaints

Upon receipt, each written complaint about a California judge is carefully reviewed by the staff. Staff also requests any additional information needed to evaluate the complaint. Each complaint is voted upon by the Commission. The Commission determines whether the complaint is unfounded and should not be pursued or whether sufficient facts exist to warrant investigation. (Commission Rule 109.)

Investigation at the Commission's Direction and Disposition of Cases Without Formal Proceedings

When the Commission determines that a complaint warrants investigation, the Commission directs staff to investigate the matter and report back to the Commission. There are two levels of investigation: a staff inquiry and a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.) Most cases begin with a staff inquiry. In more serious matters, the Commission may commence with a preliminary investigation.

Commission investigations may include contacting witnesses, reviewing court records and other documents, observing courtroom proceedings, and conducting such other investigation as the issues may warrant. If the investigation reveals facts that warrant dismissal of the complaint, the complaint may be closed without the judge being contacted. Otherwise, the judge is asked in a letter to comment on the allegations.

A judge has 20 days from the date of mailing to respond to an inquiry or investigation letter. (Commission Rules 110, 111.) Extensions of time to respond to inquiry and investigation letters are governed by the rules. (Commission Rule 108.)

Following a staff inquiry, the Commission may take one of three actions. If the facts do not support a showing that misconduct has occurred, the Commission may close the case

without any action against the judge. If improper or questionable conduct is found, but the misconduct was relatively minor or isolated or the judge recognized the problem and took steps to improve, the Commission may issue an advisory letter. (Commission Rule 110; Policy Declaration 1.2.) If serious issues remain after a staff inquiry, the Commission will authorize a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.)

After a preliminary investigation, the Commission has various options. The Commission may close the case without action or may issue an advisory letter. (Commission Rule 111; Policy Declaration 1.4.) The Commission may also issue a notice of intended private admonishment or a notice of intended public admonishment, depending upon the seriousness of the misconduct. (Commission Rules 113, 115; Policy Declaration 1.4.) The Commission may also institute formal proceedings, as discussed below.

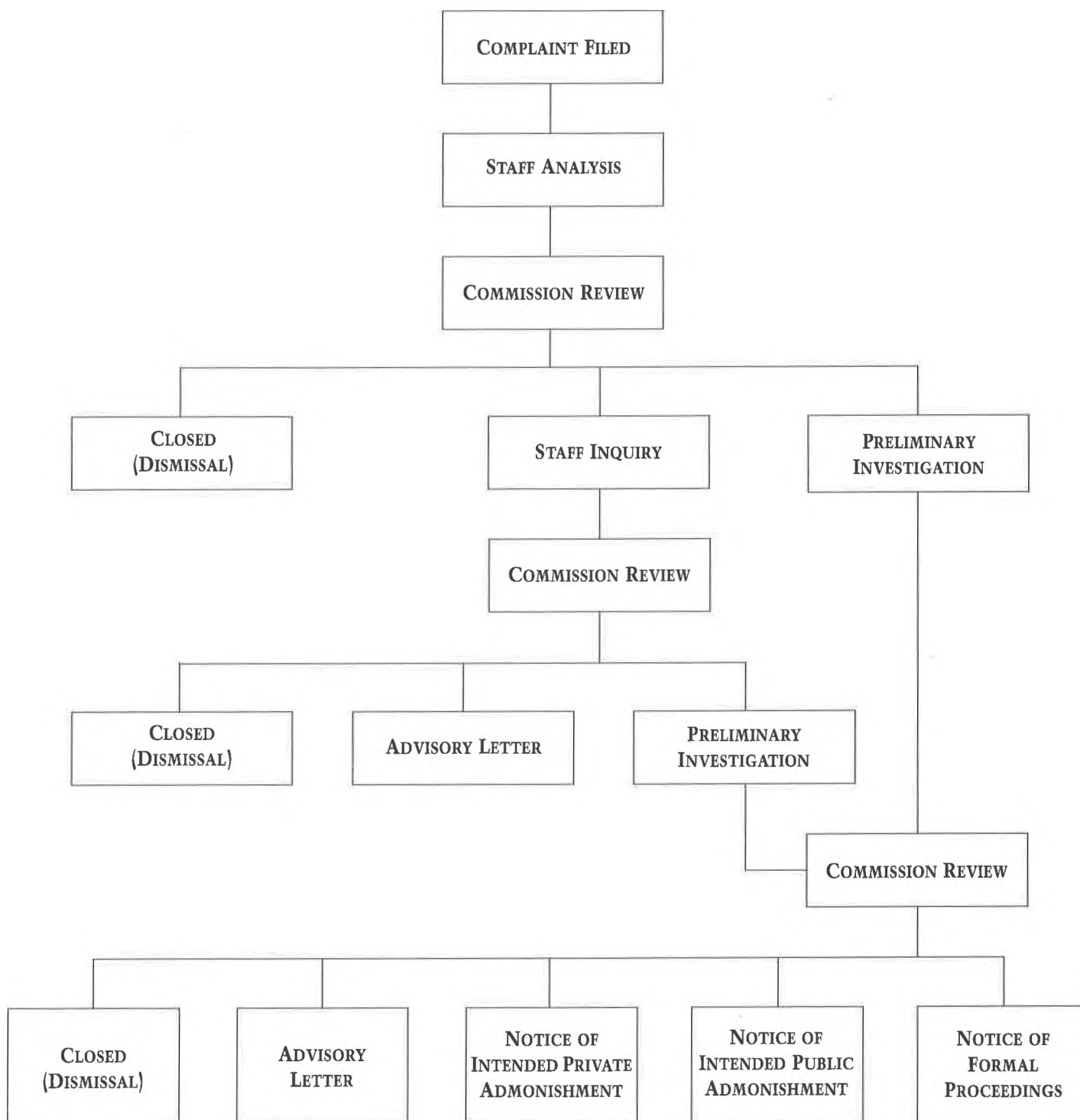
All notices of staff inquiry, preliminary investigation, or intended private or public admonishment are sent to the judge at court, unless otherwise requested. Notices that relate to a staff inquiry are given by first class mail, and notices that relate to a preliminary investigation or intended private or public admonishment are given by prepaid certified mail, return receipt requested. The Commission marks envelopes containing such notices "personal and confidential" and does not use the inscription "Commission on Judicial Performance" on the envelopes. (Commission Rule 107(a).)

Deferral of Investigation

The Commission may defer an investigation of a pending matter under certain circumstances. Deferral may be warranted, under Policy Declaration 1.8, when the case from which the complaint arose is still pending before the judge, when an appeal or ancillary proceeding is pending in which factual issues or claims relevant to the complaint are to be resolved, and when criminal or other proceedings involving the judge

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

COMPLAINT PROCESS



are pending. While deferral of an investigation may result in delay in Commission proceedings, deferral is often appropriate to ensure that complaints before the Commission do not affect court proceedings. Deferral while a reviewing court or other tribunal completes its adjudication reduces the potential for duplicative proceedings and inconsistent adjudications.

Monitoring

In the course of a preliminary investigation, the Commission may monitor the judge's conduct, deferring termination of the investigation for up to two years. Monitoring may include periodic courtroom observation, review of relevant documents, and interviews with persons who have appeared before the judge. The judge is notified that a period of monitoring has been ordered and is advised in writing of the type of behavior for which the judge is being monitored. Monitoring may be used when the preliminary investigation reveals a persistent but correctable problem. One example is demeanor that could be improved. (Commission Rule 112.)

Formal Proceedings

After preliminary investigation, in cases involving allegations of serious misconduct, the Commission may institute formal proceedings. (Commission Rule 118.) Formal proceedings also may be instituted when a judge rejects a private or public admonishment and files a demand for formal proceedings. (Commission Rules 114, 116.) When formal proceedings are instituted, the Commission issues a notice of formal proceedings, which constitutes a formal statement of the charges. The judge's answer to the notice of charges is filed with the Commission and served within 20 days after service of the notice. (Commission Rules 118(a), (b), 119(b).) Extensions of time to respond to a notice of charges are governed by the rules. (Commission Rules 108, 119.)

The rules provide for discovery between the parties after formal proceedings are instituted. A judge receives discovery from the Commis-

sion when the notice of formal proceedings is served. (Commission Rule 122.)

The Commission may disqualify a judge from performing judicial duties once formal proceedings are instituted if the judge's continued service is causing immediate, irreparable, and continuing public harm. (Commission Rule 120.)

Hearing

After the judge has filed an answer to the charges, the Commission sets the matter for a hearing. (Commission Rule 121(a).) As an alternative to hearing the case itself, the Commission may request the Supreme Court to appoint three special masters to hear and take evidence in the matter and to report to the Commission. (Commission Rule 121(b).) Special masters are active judges or judges retired from courts of record.

The judge may be represented by counsel at the hearing. The evidence in support of the charges is presented by an examiner appointed by the Commission (see Section VII, Commission Organization and Staff). The California Evidence Code applies to the hearings. (Commission Rule 125(a).)

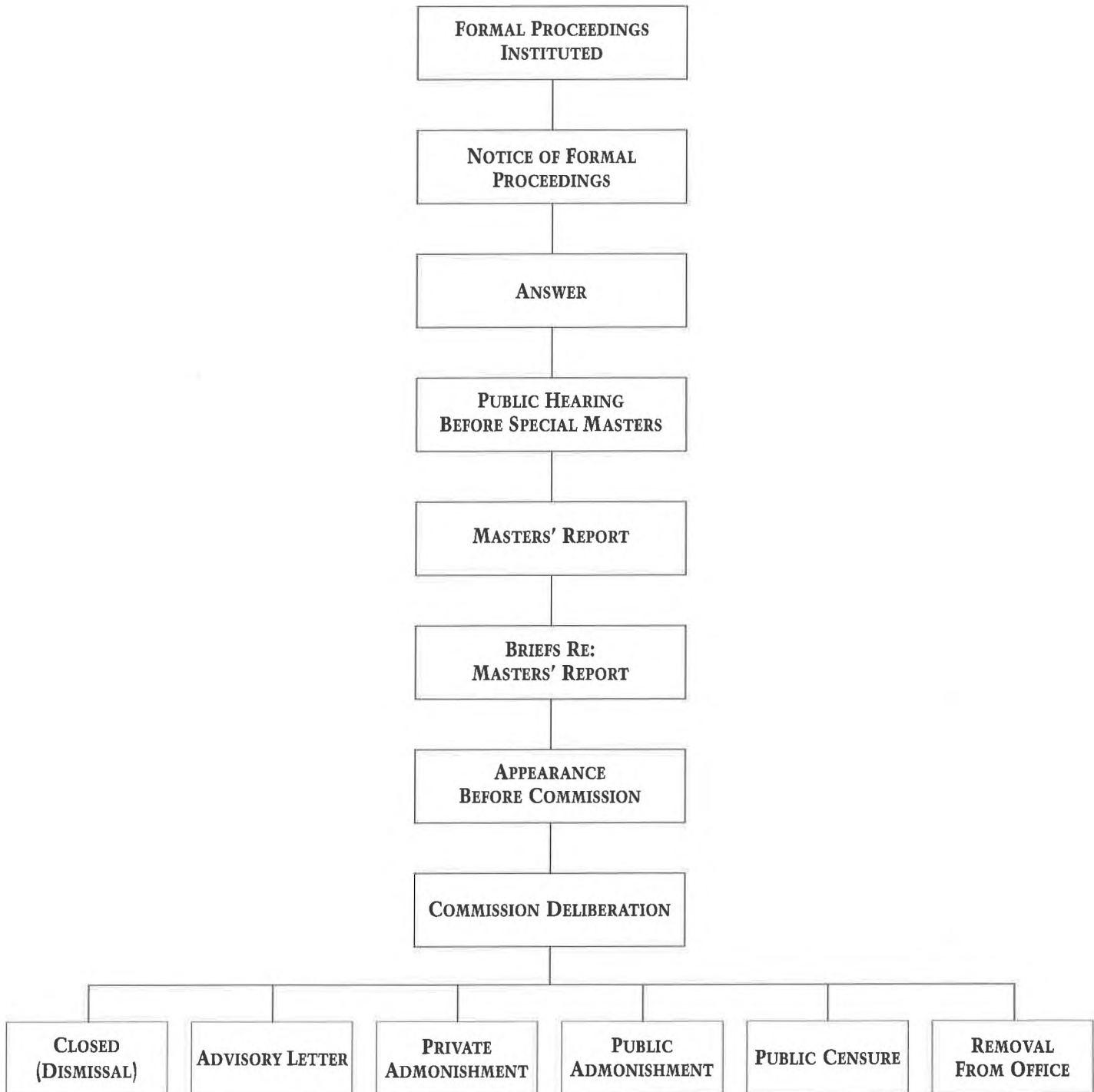
Commission Consideration Following Hearing

Following the hearing on the formal charges, the special masters file a report with the Commission. The report includes a statement of the proceedings and the special masters' findings of fact and conclusions of law with respect to the issues presented by the notice of formal proceedings and the judge's answer. (Commission Rule 129.) Upon receipt of the masters' report, the judge and the examiner are given the opportunity to file objections to the report and to brief the issues in the case to the Commission. Prior to a decision by the Commission, the parties are given the opportunity to be heard orally before the Commission. (Commission Rules 130, 132.)

Amicus curiae briefs may be considered by the Commission when it is demonstrated that the briefs would be helpful to the Commission

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

FORMAL PROCEEDINGS



in its resolution of the pending matter. (Commission Rule 131.)

Disposition of Cases After Hearing

The following are actions that may be taken by the Commission pursuant to article VI, section 18 of the California Constitution after a hearing on the formal charges, unless the case is closed without discipline:

- Publicly censure or remove a judge for action that constitutes willful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.
- Publicly or privately admonish a judge found to have engaged in an improper action or dereliction of duty.
- Retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent.

In cases involving former judges, the Commission may publicly censure or publicly or privately admonish the former judge. The Constitution also permits the Commission to bar a former judge who has been censured from receiving an assignment from any court.

After formal proceedings, the Commission may also close the matter with an advisory letter to the judge or former judge.

Release of Votes

The Commission discloses the votes of the individual Commission members on disciplinary determinations reached after formal proceedings are instituted. In addition, the Commission also releases individual votes on public admonishments issued pursuant to Commission Rules 115 and 116.

SUPREME COURT REVIEW

A judge may petition the California Supreme Court to review a Commission determination to admonish, censure or remove the judge. Review is discretionary. If the Supreme Court so chooses, its review may include an independent, "de novo" review of the record. (California Constitution, article VI, section 18(d).) California Rules of Court 935 and 936 govern petitions for review of Commission determinations.

Selected Supreme Court cases involving judicial disciplinary proceedings are listed in Appendix 2.

STATUTE OF LIMITATIONS

Article VI, section 18(d) of the California Constitution provides that a judge may be censured or removed, or a former judge censured, only for action occurring not more than six years prior to the commencement of the judge's current term (or a former judge's last term).

STANDARD OF PROOF

The standard of proof in Commission proceedings is proof by clear and convincing evidence sufficient to sustain a charge to a reasonable certainty. (*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 275.)

CONFIDENTIALITY OF COMMISSION PROCEEDINGS

The California Constitution authorizes the Commission to provide for the confidentiality of complaints to and investigations by the Commission. (California Constitution, article VI, section 18(i)(1).) The Commission's rules provide that complaints and investigations are confidential, subject to certain exceptions, for example, when public safety may be compromised, when information reveals possible criminal conduct, and when judges retire or resign during proceedings. (Commission Rule 102(f) - (k); Policy Declarations 4.1- 4.6.) During the course of a staff inquiry or preliminary investigation, persons questioned or interviewed are advised that the inquiry or investigation is confidential.

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

(Policy Declaration 1.9; *Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 528.)

The Constitution permits the Commission to make explanatory statements during proceedings. (California Constitution, article VI, section 18(k); Commission Rule 102(c).)

The Constitution provides that when formal proceedings are instituted, the notice of charges, the answer, and all subsequent papers and proceedings are open to the public. (California Constitution, article VI, section 18(j); see also Commission Rule 102(b).)

After final resolution of a case, the rules re-

quire the Commission to disclose to the person who filed the complaint that the Commission has found no basis for action against the judge, has taken an appropriate corrective action (the nature of which is not disclosed), or has imposed public discipline. The name of the judge is not used in any written communications to the complainant unless the proceedings are public. (Commission Rule 102(e).)

The Commission is also required to provide the text of any private admonishment, advisory letter or other disciplinary action to appointing authorities upon request. (California Constitution, article VI, section 18.5.)

III.

2000 STATISTICS

ACTIVE AND FORMER JUDGES



COMPLAINTS RECEIVED AND INVESTIGATED

In 2000, there were 1,579 judgeships within the Commission's jurisdiction. In addition to jurisdiction over active judges, the Commission has authority to impose certain discipline upon former judges.

The Commission's jurisdiction includes California's 429 commissioners and referees. The Commission's handling of complaints involving commissioners and referees is discussed in Section V. The Director-Chief Counsel of the Commission is designated as the Supreme Court's investigator for complaints involving the eight judges of the State Bar Court.

JUDICIAL POSITIONS

As of December 31, 2000

Supreme Court	7
Court of Appeal	93
Unified Courts*	1464
Superior Courts	4
Municipal Courts	4
Total	1,579

*Unified courts are those courts established through voter passage of Proposition 220 on June 2, 1998. As of the end of the year 2000, the trial courts in all but one county had been unified.

New Complaints

In 2000, 951 complaints about active California judges and former judges were considered by the Commission for the first time. The 951 complaints named a total of 1208 judges (739 different judges). The complaints set forth a wide array of grievances. A substantial percentage al-

leged legal error not involving misconduct or expressed dissatisfaction with a judge's discretionary handling of judicial duties.

2000 CASELOAD

Cases Pending 1/1/00	83
New Complaints Considered	951
Cases Concluded in 2000	929
Cases Pending 12/31/00	83

Discrepancies in totals are due to consolidated complaints and/or dispositions.

In 2000, the Commission received 133 complaints about subordinate judicial officers (discussed in Section V).

In 2000, the Commission received three complaints about State Bar Court judges. After review, it was determined that none warranted further action.

The Commission also received in excess of 500 complaints in 2000 concerning individuals and matters which did not come under the Commission's jurisdiction: federal judges, former judges for matters outside the Commission's jurisdiction, judges pro tem, workers' compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints and, when appropriate, made referrals.

III.
2000 STATISTICS - ACTIVE AND FORMER JUDGES

Staff Inquiries and Preliminary Investigations

In 2000, the Commission ordered 92 staff inquiries and 36 preliminary investigations.

INVESTIGATIONS COMMENCED IN 2000

Staff Inquiries	92
Preliminary Investigations	36

Formal Proceedings

At the beginning of 2000, there were four formal proceedings pending before the Commission. The Commission instituted formal proceedings in three cases during 2000. In all of these cases the Commission has the authority to impose discipline, including censure and removal, subject to discretionary review by the Supreme Court upon petition by the judge. As of the end of 2000, four formal proceedings had been concluded and three formal proceedings remained pending before the Commission.

FORMAL PROCEEDINGS

Pending 1/1/00	4
Commenced in 2000	3
Concluded in 2000	4
Pending 12/31/00	3

COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2000, regardless of when the complaints were received.¹ In 2000, a total of 929 cases were concluded by the Commission.² A chart of the disposition of all cases completed by the Commission in 2000 is included on page 13.

TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 2000

Criminal	39%
General Civil	21%
Family Law	14%
Small Claims/Traffic	8%
All Others	13%

5% of the complaints did not arise out of court cases. These complaints concerned off-bench conduct, such as the handling of court administration and political activity.

SOURCE OF COMPLAINTS CONCLUDED IN 2000

Litigant/Family/Friend	88%
Attorney	6%
Judge/Court Staff	2%
All Other Complainants	2%
(including citizens)	
Source Other Than Complaint	2%
(includes anonymous letters, news reports)	

Closed Without Action

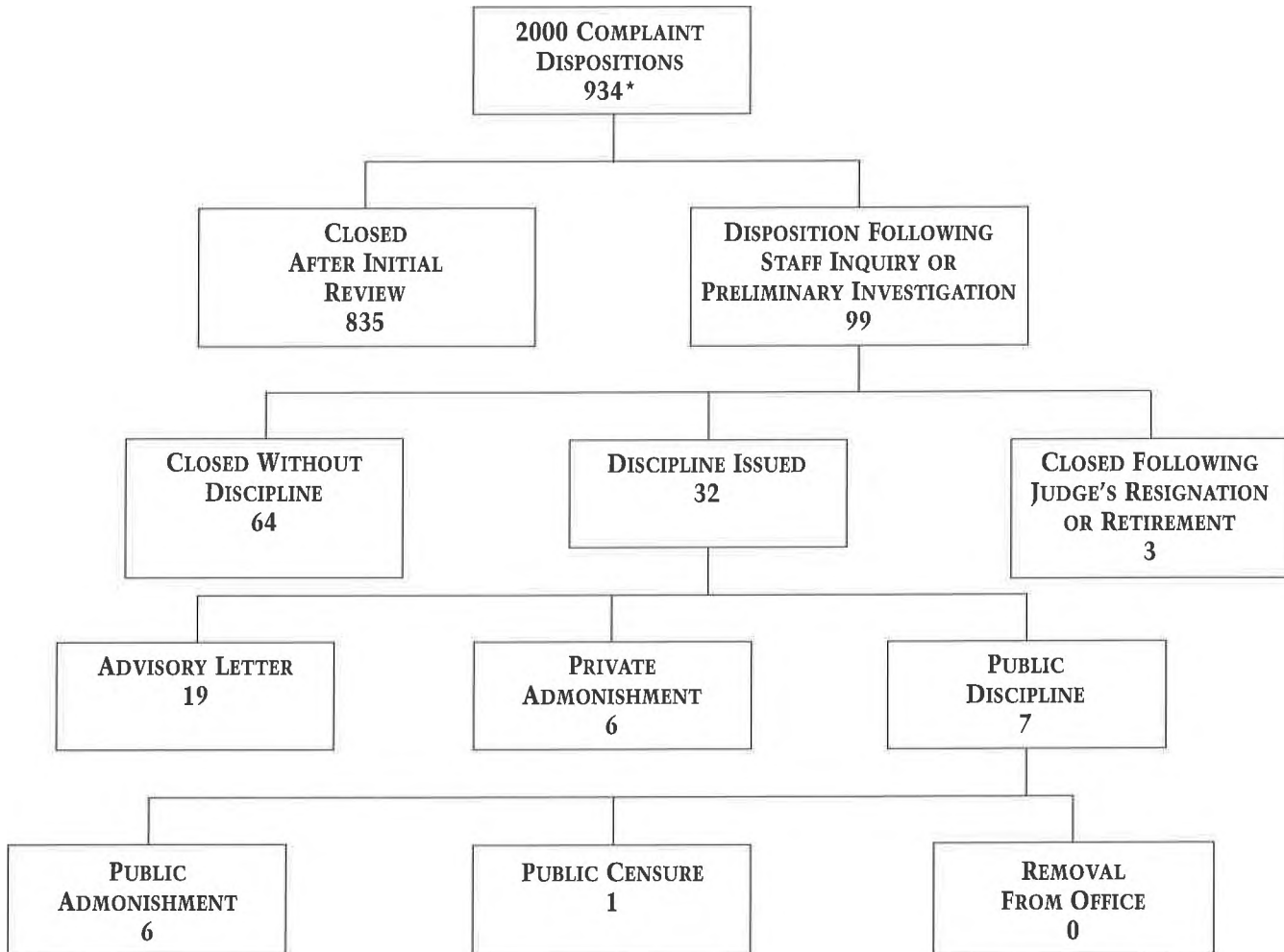
In 835 of the cases closed in 2000, a sufficient showing of misconduct did not appear after the information necessary to evaluate the complaint was obtained and reviewed. (In other words, there was an absence of facts which, if true and not otherwise explained, might constitute misconduct.) These cases were closed by the Commission without staff inquiry or preliminary investigation.

Following staff inquiry or preliminary investigation, another 64 matters were closed without any action. In these cases, investigation showed that the allegations were unfounded or

¹ Staff inquiries and preliminary investigations in the cases closed in 2000 may have commenced in prior years. Cases or portions of cases pending at the end of 2000 are not included in complaint disposition statistics.

² The total number of dispositions exceeds the total number of cases concluded because complaints involving multiple allegations of varying severity may be resolved with multiple dispositions. For example, some allegations in a case may warrant closure with an advisory letter while others in the same case warrant public discipline. These dispositions do not always occur within the same year – some allegations may be closed at the time formal charges are issued and the remaining allegations not concluded until after hearing and determination by the Commission.

**2000
COMPLAINT DISPOSITIONS**



* See footnote 2 at page 12.

unprovable, or the judge gave an adequate explanation of the situation.

Closed With Discipline

In 2000, the Commission issued one public censure, six public admonishments, six private admonishments and 19 advisory letters. Each of these dispositions is summarized in Section IV.

A chart of the types of judicial conduct which resulted in an advisory letter or other discipline in 2000 appears on page 15. The types of conduct are listed in order of prevalence. The numbers on the chart indicate the number of times each type of conduct resulted in discipline. A single act of misconduct is counted once and is assigned to the category most descriptive of the wrongdoing. If separate acts of different

types of wrongdoing were involved in a single case, each different type of conduct was counted and assigned to an appropriate category. If the same type of conduct occurred on multiple occasions in a particular case, however, it was counted only once.

Resignations and Retirements

The Constitution authorizes the Commission to continue proceedings after a judge retires or resigns and, if warranted, to impose discipline upon the former judge. When a judge resigns or retires during proceedings, the Commission determines whether to continue or close the case and, if the case is closed, whether to refer the matter to another entity such as the State Bar. In 2000, the Commission closed three matters without discipline when the judge resigned or retired with an investigation pending.

III.
2000 STATISTICS - ACTIVE AND FORMER JUDGES

TYPES OF CONDUCT RESULTING IN DISCIPLINE*

DEMEANOR, DECORUM
(includes inappropriate humor)
[6]

**MISCELLANEOUS OFF-BENCH
CONDUCT**
[6]

**DECISIONAL DELAY,
TARDINESS, ATTENDANCE**
[4]

**GIFTS/LOANS/FAVORS
TICKET-FIXING**
[4]

**BIAS OR APPEARANCE OF BIAS
(NOT DIRECTED TOWARD A
PARTICULAR CLASS)**
(includes embroilment, prejudgment,
favoritism)
[3]

**ON-BENCH ABUSE OF
AUTHORITY IN PERFORMANCE
OF JUDICIAL DUTIES**
[3]

**ADMINISTRATIVE
MALFEASANCE**
(includes conflicts between judges, failure
to supervise staff, delay in responding to
complaints about commissioners)
[3]

**DISQUALIFICATION,
DISCLOSURE AND
RELATED RETALIATION**
[3]

**SEXUAL HARASSMENT,
INAPPROPRIATE WORKPLACE
GENDER-BASED CONDUCT**
[3]

**COMMENT ON
PENDING CASE**
[2]

EX PARTE COMMUNICATIONS
[2]

**FAILURE TO COOPERATE,
LACK OF CANDOR WITH
REGULATORY AUTHORITIES**
[2]

OFF-BENCH ABUSE OF OFFICE
(includes charitable fund raising,
improper use of official stationery)
[2]

**MISUSE OF
COURT RESOURCES**
[2]

**FAILURE TO
ENSURE RIGHTS**
[1]

**BIAS OR APPEARANCE OF BIAS
TOWARD PARTICULAR CLASS**
[1]

**IMPROPER BUSINESS
ACTIVITIES**
[1]

SLEEPING
[1]

**ALCOHOL OR DRUG RELATED
CRIMINAL CONDUCT**
[1]

**SUBSTANCE
ABUSE**
[1]

ABUSE OF CONTEMPT/SANCTIONS
[1]

* See "Closed With Discipline" at page 14 of text.

IV. CASE SUMMARIES



PUBLIC DISCIPLINE

Following is a summary of public discipline imposed in 2000. The full text of these decisions is available from the Commission and on the Commission's Web site at <http://cjp.ca.gov>.

Public Censure by the Commission

In 2000, the Commission imposed one public censure.



Public Censure of W. Jackson Willoughby, June 27, 2000

Judge W. Jackson Willoughby of the Placer County Superior Court was publicly censured for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission.

The Commission found that Judge Willoughby engaged in prejudicial conduct when he rubbed his bailiff's breasts without consent, and repeatedly stared at her breasts and asked to see them, after she had breast implant surgery. The Commission also found that the judge engaged in prejudicial conduct by:

- Saying to another bailiff who was changing her uniform shirt in the courthouse hallway, "I could stand here and watch you undress all day,"
- Telling his former clerk that he just wanted her to "sit there and look pretty,"

- Making kissing motions toward his former clerk, and
- Referring to a female deputy district attorney as "Old Iron Tits."

Citing Commission and Supreme Court precedent and mitigating factors, including the judge's recognition of the wrongfulness of his conduct and issuance of a public apology, his public humiliation, and his contributions to the judicial system, the Commission publicly censured the judge.

Commission members Judge Madeleine I. Flier, Ms. Gayle Gutierrez, Mr. Patrick M. Kelly, Mrs. Crystal Lui, Judge Rise Jones Pichon, and Ms. Ramona Ripston voted in favor of the public censure. Commission members Justice Daniel M. Hanlon, Mr. Michael A. Kahn, Ms. Lara Bergthold, and Mr. Mike Farrell favored the removal of Judge Willoughby from office, expressing the view that removal was necessary to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity of California's judicial system. At the time of the decision, there was one public member vacancy.

Public Admonishments by the Commission

The Commission may publicly or privately admonish a judge for improper action or dereliction of duty. Public admonishments are issued in cases when the improper action or dereliction of duty is more serious than conduct warranting a private admonishment. In 2000, the Commission publicly admonished six judges.

XX
GV

Public Admonishment of Judge John B. Gibson, January 27, 2000

Judge John B. Gibson of the San Bernardino County Superior Court was publicly admonished for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission.

The Commission found that the judge engaged in prejudicial conduct by the following actions toward one court employee:

- Sending her a sexually suggestive memo intended as a joke.
- Commenting to a friend of the judge's in the presence of the employee, "Isn't that the best looking pair of legs and ass you've ever seen?"
- Making comments to the employee about her appearance such as "Those are nice shoes you have on, and they—your legs look very nice in them..." "That's a beautiful blouse you have on. Do you have a slip on or a camisole," and "That's nice material. I wish I could be that close to your skin."
- Telling the employee that he "really enjoyed seeing [another employee] walk in the door with her light-colored sweater on and her 46DD bra and her nipples showing...I really get excited when I see that."
- Tugging on the employee's bra strap on several occasions, once while saying words to the effect of, "I'm an expert at undoing these."
- On several occasions, while putting on his judicial robe in chambers, wiggling his fingers through his robe in the area of his groin and saying to the employee, "Say hello to Mr. Bobo."

The Commission also found that the judge engaged in prejudicial conduct when he wrote a joking memo concerning putting the employee to death. The memo included the name of another employee, offending and embarrassing that employee.

Finally, the Commission found that the judge engaged in prejudicial conduct when he kissed a probation officer on the mouth, without her consent, in his courtroom after confirming that she had resigned from her job with the county.

The Commission determined that public admonishment was the appropriate discipline because the judge's actions took place in the early 1990's, during his first years on the bench, and most involved one employee with whom he had a unique "joking" relationship. The Commission also noted that the judge's conduct over the past six years had been exemplary, and that he had suffered public humiliation.

Commission members Mr. Michael A. Kahn, Judge Madeleine I. Flier, Mrs. Crystal Lui, Judge Rise Jones Pichon, Ms. Ramona Ripston, and Ms. Julie Sommars voted in favor of the public admonishment. Commission members Justice Daniel M. Hanlon, Ms. Lara Bergthold, Mr. Mike Farrell and Mr. Patrick M. Kelly favored a public censure for Judge Gibson's lack of candor. At the time of the decision, there was one public member vacancy.

XX
GV

Public Admonishment of Judge Robert Crawford Coates, April 12, 2000

Judge Robert C. Coates of the San Diego County Superior Court was publicly admonished for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's action was taken after issuance of a notice of intended public admonishment.

The Commission found that the judge engaged in prejudicial conduct by:

- Sending numerous documents that were, or appeared to have been, designed to lend the prestige of the judicial office to advance the judge's personal interests.
- Making extensive use of court secretaries and other court resources to generate personal correspondence and documents.
- Engaging in a pattern of conduct toward court staff and persons appearing before him that was inconsistent with canon 3B(4), which requires a judge to be patient, dignified and courteous to those with whom the judge deals in an official capacity.
- Communicating ex parte with a jury concerning the jury's request for transcripts of witness testimony.

Commission members Justice Daniel M. Hanlon, Ms. Lara Bergthold, Mr. Mike Farrell, Mr. Michael A. Kahn, Mr. Patrick M. Kelly, Mrs. Crystal Lui, Judge Rise Jones Pichon, Ms. Ramona Ripston, and Ms. Julie Sommars voted to impose the public admonishment. Judge Madeleine I. Flier voted against public admonishment. Judge Flier agreed in principle that a public admonishment was warranted, but favored a lesser sanction regarding certain incidents involving court staff. At the time of the decision, there was one public member vacancy.



**Public Admonishment of Judge Gary P. Ryan,
June 20, 2000**

Judge Gary P. Ryan of the Orange County Superior Court was publicly admonished for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's actions followed issuance of a notice of intended public admonishment.

The Commission found that the judge engaged in prejudicial conduct when his vehicle

collided with the rear end of another vehicle, not causing injury to the occupants, while the judge was driving with a blood alcohol level of .17 per cent. The judge pled guilty to driving under the influence of alcohol and driving with a blood alcohol level of .08 per cent or more. The judge also failed to report to the Commission either that he had been charged or that he had been convicted of a misdemeanor involving the personal use of alcohol, as required by canon 3D(3).

Commission members Justice Daniel M. Hanlon, Ms. Lara Bergthold, Mr. Mike Farrell, Ms. Gayle Gutierrez, Mr. Michael A. Kahn, Mr. Patrick M. Kelly, and Ms. Ramona Ripston voted to impose the public admonishment. Commission members Judge Madeleine I. Flier, Mrs. Crystal Lui, and Judge Rise Jones Pichon voted against public admonishment and would have imposed a less severe sanction. At the time of the decision, there was one public member vacancy.



**Public Admonishment of Judge Susanne S.
Shaw, June 26, 2000**

Judge Susanne S. Shaw of the Orange County Superior Court was publicly admonished for conduct prejudicial to the administration of justice that brings the judicial office into disrepute and improper action. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission.

The Commission found that the judge engaged in prejudicial conduct when she spoke ex parte to two deputy district attorneys about a case over which she was presiding, telling them that she did not want the district attorney's office to "undercut" her on the case. The Commission found that the remark was an improper ex parte communication and gave the appearance of embroilment.

The Commission also found that the judge engaged in prejudicial conduct when, upon re-

manding a defendant to custody, she made a comment referring to the defendant's physical appearance that was reasonably understood to suggest that the defendant might be subject to sexual assault in jail.

Finally, the Commission found that the judge engaged in improper action when she made certain comments to a deputy district attorney who had declined to reduce a driving under the influence charge. The judge commented that there had been "major alcoholics" in the district attorney's office. She also made remarks that implied that the attorney's future father-in-law (a former judge) was an intemperate drinker. In addition, she made remarks that implied that the attorney and her fiancé drank intemperately on weekends. She also said that the attorney lacked discretion and would regret her decision in twenty years. The Commission found that these personalized comments were demeaning, discourteous and undignified.

Commission members Justice Daniel M. Hanlon, Mr. Michael A. Kahn, Ms. Lara Bergthold, Mr. Mike Farrell, Judge Madeleine I. Flier, Ms. Gayle Gutierrez, Mr. Patrick M. Kelly, Mrs. Crystal Lui, Judge Rise Jones Pichon, and Ms. Ramona Ripston voted in favor of the public admonishment. At the time of the decision, there was one public member vacancy.



**Public Admonishment of Judge Luis A.
Cardenas (Retired), October 3, 2000**

Former Judge Luis A. Cardenas, retired from the Orange County Superior Court, was publicly admonished for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission.

The Commission found that the judge engaged in prejudicial conduct by making himself available to two attorneys – a father and daughter – with whom he had special friendships, and granting their requests in a way that suggested they were in a special position to influence him.

The Commission cited six incidents in which the judge ordered defendants released on their own recognizance, reduced bail, or modified probation. In one incident, the judge failed to follow the procedures required by statute and misrepresented the source of certain information when he ordered a bail reduction.

Noting that Judge Cardenas had retired in 1996 after twenty years on the bench without discipline, and was well respected as a judge, the Commission determined that public admonishment was the appropriate sanction. Commission members Justice Daniel M. Hanlon, Mr. Michael A. Kahn, Ms. Lara Bergthold, Mr. Mike Farrell, Judge Madeline I. Flier, Ms. Gayle Gutierrez, Mr. Patrick M. Kelly, Mrs. Crystal Lui, Judge Rise Jones Pichon, and Ms. Ramona Ripston voted in favor of the public admonishment. At the time of the decision, there was one public member vacancy.



**Public Admonishment of Bernard E. Revak,
December 12, 2000**

Judge Bernard E. Revak of the San Diego County Superior Court was publicly admonished for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's action followed issuance of a notice of intended public admonishment.

The Commission found that Judge Revak engaged in prejudicial conduct when he told three friends with whom he was golfing that the verdict and/or punitive damages award in a large civil case had been reversed on appeal. One of the friends was a plaintiff in the case and another was married to a plaintiff. Judge Revak did not identify the source of his information by name, but said he had had a friend from the Court of Appeal over for dinner; he also made a statement indicating that the Court of Appeal,

or the opinion writer, "didn't like [the trial judge] anyway." At no time that day did the judge tell his friends that the remarks were not true or were intended as a joke. Days later, after the attorney for his plaintiff friend requested a meeting with the judge, Judge Revak stated that he had been joking.

The Commission determined that although Judge Revak had dined with a Court of Appeal justice the night before making the statements to his friends, no determination of the outcome of the case had been made at the Court of Appeal at that time. The judges therefore could not have discussed how the appellate court had decided to rule, and Judge Revak could not have conveyed such information to his friends.

Because of Judge Revak's statements, however, the plaintiffs sought and ultimately obtained a transfer of the case to another district of the Court of Appeal. The California Supreme Court ordered the transfer "to avoid even the appearance of impropriety." Judge Revak's comments, and the plaintiffs' motions and their aftermath, resulted in substantial publicity adverse to public confidence in the judiciary.

The Commission determined that public admonishment was the appropriate sanction. Commission members Justice Daniel M. Hanlon, Mr. Michael A. Kahn, Ms. Lara Bergthold, Judge Madeleine I. Flier, Ms. Gayle Gutierrez, Mr. Patrick M. Kelly, Mrs. Crystal Lui, Judge Rise Jones Pichon, and Ms. Ramona Ripston voted to impose the public admonishment. Commission member Mr. Mike Farrell did not participate in this matter. At the time of the decision, there was one public member vacancy.

PRIVATE DISCIPLINE

PRIVATE ADMONISHMENTS

Private admonishments are designed in part to correct problems at an early stage, thus serving the Commission's larger purpose of maintaining the integrity of the California judiciary.

A private admonishment also may be used

to elevate discipline in subsequent proceedings. This is particularly true in cases where the judge repeats the conduct that was the subject of the earlier discipline.

In 2000, the Commission imposed six private admonishments. The admonishments are summarized below. In order to maintain confidentiality, it has been necessary to omit certain details, making some summaries less informative than they otherwise would be. Because these examples are intended in part to educate judges and the public, and to assist judges in avoiding inappropriate conduct, the Commission believes it is better to describe them in abbreviated form than to omit them altogether.

1. A judge attempted to engage the judge's clerk in questionable financial transactions that would have involved substantial sums of money and were intended to benefit the judge.
2. A judge's response to an inquiry from the Commission lacked candor. The judge misinformed a member of court staff concerning the employee's obligation to speak with the Commission and appeared to be attempting to influence the employee's interview with the Commission.
3. A judge was arrested for driving under the influence and convicted following a plea of no contest. In mitigation, the judge was cooperative with the police, self-reported to the presiding judge and to the Commission, and issued a public statement expressing embarrassment and remorse. The Commission's investigation revealed no evidence of an ongoing alcohol problem.
4. A judge delayed in deciding two matters and improperly signed salary affidavits. In response to the Commission's inquiry, the judge offered defenses that the judge later conceded were disingenuous and misleading.
5. A judge used and threatened to use excessive force to control litigants.
6. A judge engaged in a pattern of erratic and

inappropriate conduct toward court personnel and attorneys appearing before the judge.

ADVISORY LETTERS

The Commission advises caution or expresses disapproval of a judge's conduct in an advisory letter. The Commission has issued advisory letters in a variety of situations. As noted by the California Supreme Court in *Oberholzer v. Commission on Judicial Performance*, "Advisory letters may range from a mild suggestion to a severe rebuke." (20 Cal.4th at p. 393.) An advisory letter may be issued when the impropriety is isolated or relatively minor, or when the impropriety is more serious but the judge has demonstrated an understanding of the problem and has taken steps to improve. An advisory letter is especially useful when there is an appearance of impropriety. An advisory letter might be appropriate when there is actionable misconduct offset by substantial mitigation.

In 2000, the Commission issued 19 advisory letters. These advisory letters are summarized below.

Disclosure and Disqualification

Judges must disqualify themselves under certain circumstances and trial judges must make appropriate disclosures to those appearing before them.

1. A judge ordered the own-recognizance release of the spouse of a member of the judge's staff after discussing the case with the employee and giving advice about the spouse's release.
2. A judge failed to recuse when an attorney who was representing the judge in a civil case appeared before the judge. When the attorney appeared before the judge after the attorney withdrew from the case, the judge failed to recuse and did not disclose that the attorney was the judge's former counsel.

Demeanor and Decorum

A judge "shall require order and decorum in proceedings before the judge" and "shall be pa-

tient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity..." (Canon 3 B(3), (4).)

3. A judge made demeaning comments to a proper defendant that impugned the defendant's intelligence.

Failure to Ensure Rights

Society's commitment to institutional justice requires that judges be solicitous of the rights of persons who come before the court. (See *Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 286.)

4. A judge imposed attorney's fees on a defendant represented by the public defender's office without holding a hearing or inquiring regarding ability to pay as required by law.

Bias

Judges are prohibited from manifesting bias in the performance of judicial duties as required by law. (Canon 3B(5).)

5. A judge made remarks during a sentencing hearing that evidenced embroilment and a lack of impartiality. The judge's highly disparaging remarks reflected the judge's personal view that the case – which had resulted in a conviction – should not have been pursued.
6. A judge's letter to the sheriff urging administrative action against an inmate demonstrated embroilment and a lack of impartiality.

Off-Bench Improprieties

A judge is required to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. (Canon 2A and Commentary.)

7. A judge engaged in a pattern of extensive use of court secretaries and other resources for pur-

IV.
CASE SUMMARIES

poses unrelated to court business, the law, the legal system or the administration of justice.

8. A judge engaged in off-bench activities that appeared to denigrate the judicial system and had the potential to undermine juror respect for the court and public confidence in the judicial system.

9. A judge served as a trustee and attorney-in-fact for a person who was not a member of the judge's family.

Delay, Dereliction of Duty

Judges are required to perform the duties of judicial office diligently as well as impartially. (Canon 3.)

10. A judge was routinely late taking the bench for morning calendars.

11. A judge engaged in activities away from the courthouse during working hours that undermined public confidence in the integrity of the judiciary.

12. A judge engaged in activities away from the courthouse during working hours that undermined public confidence in the integrity of the judiciary.

Public Comment

Canon 3B(9) prohibits judges from making public comment about a pending or impending proceeding in any court, with limited exceptions.

13. A judge made public comments to the media concerning a pending case.

Gifts

To avoid even the appearance of impropriety, judges are precluded from accepting gifts except under limited circumstances.

14. A judge exchanged gifts with a court vendor whose contract was supervised by the judge. There were mitigating circumstances.

Favoritism

A judge must exercise the power of appointment impartially and on the basis of merit. Judges are required to avoid nepotism and favoritism. (Canon 3C(4).)

15. A judge appointed an attorney with whom the judge had a social relationship; the judge appointed that attorney far more frequently than the judge appointed other attorneys, giving rise to an appearance of favoritism in appointments. On at least one occasion, the judge failed to disclose the judge's relationship with the attorney.

Judges must not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment, nor may judges convey or permit others to convey the impression that any individual is in a special position to influence the judge. (Canon 2B(1).)

16. A judge ordered the own-recognition release of a professional acquaintance who called the judge personally to request the release. The defendant was released before being booked and visited the judge in chambers after being released, creating an appearance of preferential treatment.

Administrative Malfeasance

Judges are required to diligently discharge their administrative responsibilities.

17. A presiding judge failed to respond in a timely manner to a complaint about a court commissioner.

18. A presiding judge promptly acknowledged and investigated a complaint against a court commissioner and took informal corrective action but delayed five months before notifying the complainant of the outcome of the investigation.

Sleeping

19. A judge appeared to be sleeping during court proceedings.

V. SUBORDINATE JUDICIAL OFFICERS



Since June of 1998, the Commission has shared authority with local courts over the discipline of "subordinate judicial officers" — attorneys employed by California's state courts to serve as court commissioners and referees. In 2000, there were 429 authorized subordinate judicial officer positions in California.

SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS As of December 31, 2000

Court Commissioners	382
Court Referees	47
Total	429

COMMISSION PROCEDURES

The constitutional provisions governing the Commission's role in the oversight and discipline of court commissioners and referees expressly provide that the Commission's jurisdiction is discretionary. Each local court retains initial jurisdiction to discipline subordinate judicial officers or to dismiss them from its employment and also has exclusive authority to respond to complaints about conduct problems outside the Commission's constitutional jurisdiction. Since the local court's role is primary, the Commission's rules require that complaints about subordinate judicial officers be made first to the local court. (Commission Rule 109(c)(1).)

Complaints about subordinate judicial officers come before the Commission in a number of ways. First, when a local court completes its disposition of a complaint, the complainant has

the right to seek review by the Commission. (When closing the complaint, the local court is required to advise the complainant to seek such review within 30 days.) Second, a local court must notify the Commission when it imposes written or formal discipline or terminates a subordinate judicial officer. Third, a local court must notify the Commission if a referee or commissioner resigns while an investigation is pending. (Commission Rule 109(c)(3), (4).) Lastly, the Commission may also investigate or adjudicate a complaint against a subordinate judicial officer at the request of a local court. (Commission Rule 109(c)(2).)

When a matter comes to the Commission after disposition by a local court, the Commission may commence an investigation if it appears that the local court has abused its discretion by failing to investigate sufficiently, by failing to impose discipline, or by imposing insufficient discipline. To assist in coordinating the Commission's review of complaints and discipline involving commissioners and referees, the California Rules of Court require local courts to adopt procedures to ensure that complaints are handled consistently and that adequate records are maintained. (See California Rules of Court, rule 6.655.) Upon request by the Commission, the local court must make its records concerning the complaint available to the Commission.

The Constitution requires the Commission to exercise its disciplinary authority over subordinate judicial officers using the same standards specified in the Constitution for judges. Thus, the rules and procedures that govern in-

V.
SUBORDINATE JUDICIAL OFFICERS

vestigation of judges and formal proceedings (discussed above in Section II, Commission Procedures) also apply to matters involving subordinate judicial officers. In addition to other disciplinary sanctions, the Constitution provides that no person found unfit to serve as a subordinate judicial officer after a hearing before the Commission shall be eligible to serve as a subordinate judicial officer. The Constitution also provides for discretionary review of Commission determinations upon petition to the California Supreme Court.

2000 STATISTICS

2000 CASELOAD

Cases Pending 1/1/00	1
New Complaints Considered	133
Cases Concluded in 2000	127
Cases Pending 12/31/00	5
Discrepancies in totals are due to consolidated complaints.	

Complaints Received and Investigated

In 2000, 133 complaints about subordinate judicial officers were reviewed by the Commission. Because the local courts were required to conduct the initial investigations, the Commission's function primarily entailed reviewing the local courts' actions to determine whether there was an abuse of discretion in the disposition of the complaints.

In 2000, the Commission concluded its review of 127 complaints involving subordinate judicial officers. This included three matters in which the local court had imposed a written reprimand or other formal discipline and had informed the Commission of its action, two matters in which the local court had requested the Commission to conduct the initial investigation, and 122 matters in which complainants sought review of the local courts' handling of the complaints. After investigation, the two matters referred by local courts for Commission investigation were returned to the local courts for dis-

position. The remaining 125 matters were closed by the Commission as the Commission determined that the local courts had not abused their discretion in the handling or the disposition of the complaints.

At the end of the year, five matters remained under investigation. These included two matters in which subordinate judicial officers retired or resigned while complaints were under investigation by the local courts, one matter in which a subordinate judicial officer was terminated by the local court, and two matters in which complainants sought review of the local courts' handling or disposition of the complaints.

**TYPE OF COURT CASE UNDERLYING
SUBORDINATE JUDICIAL OFFICER
COMPLAINTS CONCLUDED IN 2000**

Small Claims	38%
Family Law	35%
Traffic	9%
General Civil	5%
Criminal	3%
All Others (including off-Bench)	10%

**SOURCE OF COMPLAINTS
INVOLVING SUBORDINATE JUDICIAL OFFICERS
CONCLUDED IN 2000**

Litigant/Family/Friend	95%
Judge/Court Staff	3%
Attorney	1%
Witness	1%

VI. JUDICIAL DISABILITY RETIREMENT



In addition to its disciplinary function, the Commission is responsible for evaluating and acting upon judges' applications for disability retirement. This responsibility is shared with the Chief Justice of the California Supreme Court. The application procedure is set forth in Division V of the Commission's Policy Declarations (Appendix 1, section C). Pertinent statutes are included in Appendix 1, section F. Disability retirement proceedings are confidential, with limited exceptions.

Judges are eligible to apply for disability retirement after either four or five years on the bench, depending on when they took office. This prerequisite does not apply if the disability results from injury or disease arising out of and in the course of service.

The statutory test for disability retirement is a mental or physical condition that precludes the efficient discharge of judicial duties and is permanent or likely to become so. The applicant judge is required to prove that this standard is satisfied. The judge must provide greater support for the application and meet a heavier burden of proof if the application is filed while formal disciplinary charges are pending, if the judge has been defeated in an election, or if the judge has been convicted of a felony.

Judicial disability retirement may afford substantial lifetime benefits. Applications, accordingly, are carefully scrutinized by both the Commission and the Chief Justice. In most cases, the Commission will appoint an independent physician or physicians to review medical records, examine the judge, and report on whether the judge meets the test for disability

retirement.

Because the law requires that the disability be permanent or likely to become so, the applicant judge must exhaust all reasonable treatment options before a decision on the application can be made. If the Commission finds that the judge is disabled, but may recover with treatment, the Commission will keep the application open and closely monitor the judge's progress, requiring regular medical reports and frequent medical examinations. Disability retirement will be approved only if the record, including the opinion of the Commission's independent medical examiners, establishes that further treatment would be futile. If the Commission determines that an application should be granted, it is referred to the Chief Justice for consideration. A judge whose application is denied is given an opportunity to seek review of the denial of benefits.

Once a judge retires on disability, the Commission may review the judge's medical status every two years prior to age 65, to ascertain whether he or she remains disabled. A judge who is no longer disabled becomes eligible to sit on assignment, at the discretion of the Chief Justice. Should an eligible judge refuse an assignment, the disability retirement allowance ceases.

On occasion, a judge is absent from the bench for medical reasons for a substantial period of time, but does not apply for disability retirement. If the absence exceeds 90 court days in a 12-month period, the presiding judge is required to notify the Commission. Because the absent judge is not available for judicial service,

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the Commission will invoke its disciplinary authority and conduct an investigation, which may include an independent medical examination. Should the investigation establish that the judge is disabled or displays a persistent failure or inability to perform judicial duties, the Commission will institute formal proceedings, which may lead to discipline or involuntary disability retirement.

**AMENDMENTS TO DISABILITY POLICY
DECLARATIONS**

In June 2000, the Commission amended its Policy Declarations to accommodate changes in the law for recipients of judicial disability benefits. As of January 1, 2000, disability benefits terminate if the judge earns income from activities "substantially similar" to those which he or she was unable to perform due to disability.

Under these amendments, a physician who finds that an applicant judge is disabled must specify the judicial duties that cannot be performed. Similarly, if the Commission approves an application, it may prepare findings specifying those duties. In addition, if the Judges' Retirement System requests information about a disability retirement application to assist in determining whether to terminate benefits, the Commission may provide such information.

2000 STATISTICS

At the beginning of 2000, one disability retirement application was pending before the Commission. The Commission received four additional applications during the year. The Commission granted two disability retirement applications during 2000. Three applications remained pending at the close of 2000.

VII. COMMISSION ORGANIZATION, STAFF AND BUDGET



COMMISSION ORGANIZATION AND STAFF

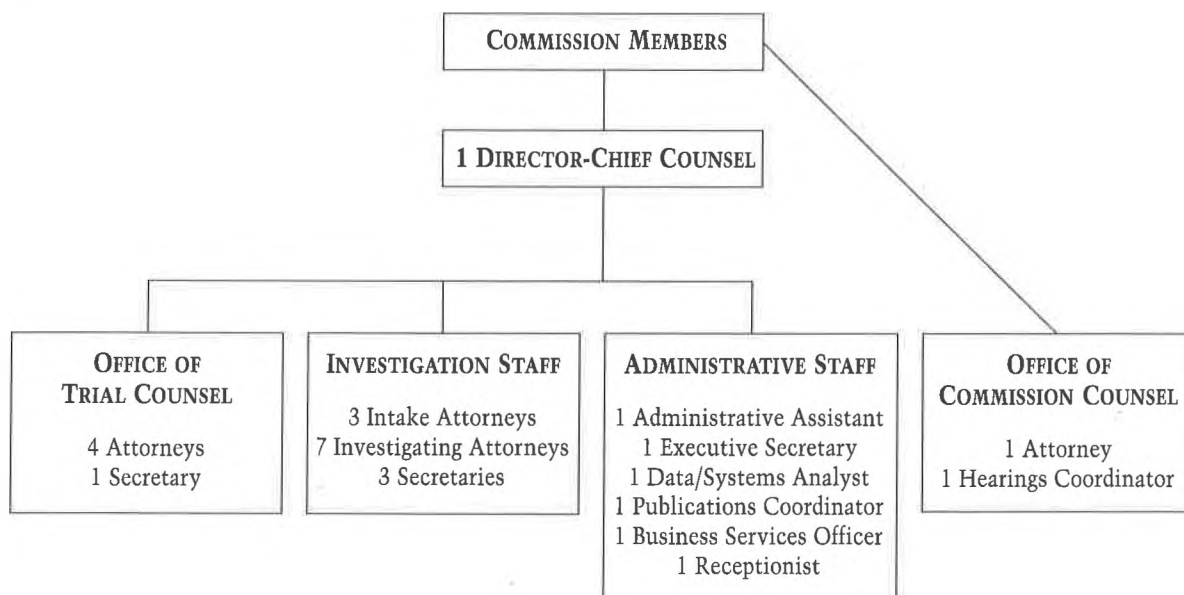
The Commission has 27 authorized staff positions, including 16 attorneys and 11 support staff. All Commission staff are state employees.

The Director-Chief Counsel heads the agency and reports directly to the Commission. The Director-Chief Counsel oversees the intake and investigation of complaints and the Commission examiners' handling of formal proceedings. The Director-Chief Counsel is also the pri-

mary liaison between the Commission and the judiciary, the public, and the media. Victoria B. Henley has served as Director-Chief Counsel since 1991.

The Commission's legal staff includes 10 attorneys responsible for the evaluation and investigation of complaints. Of these, three are primarily responsible for reviewing and evaluating new complaints, and seven are primarily responsible for conducting staff inquiries and preliminary investigations.

ORGANIZATIONAL CHART



VII.
COMMISSION ORGANIZATION, STAFF AND BUDGET

Four Trial Counsel serve as examiners during formal proceedings. The examiner is responsible for preparing cases for hearing and presenting the evidence that supports the charges before the special masters. The examiner handles briefing regarding special masters' reports, and presents cases orally and in writing in hearings before the Commission and the California Supreme Court.

Commission Counsel reports directly to the Commission. Commission Counsel is responsible for the coordination of formal hearings and is solely responsible for assisting the Commission in its deliberations during its adjudication of contested matters. Commission Counsel does not participate in the investigation or prosecution of cases. Richard G.R. Schickele has served as Commission Counsel since July of 1998.

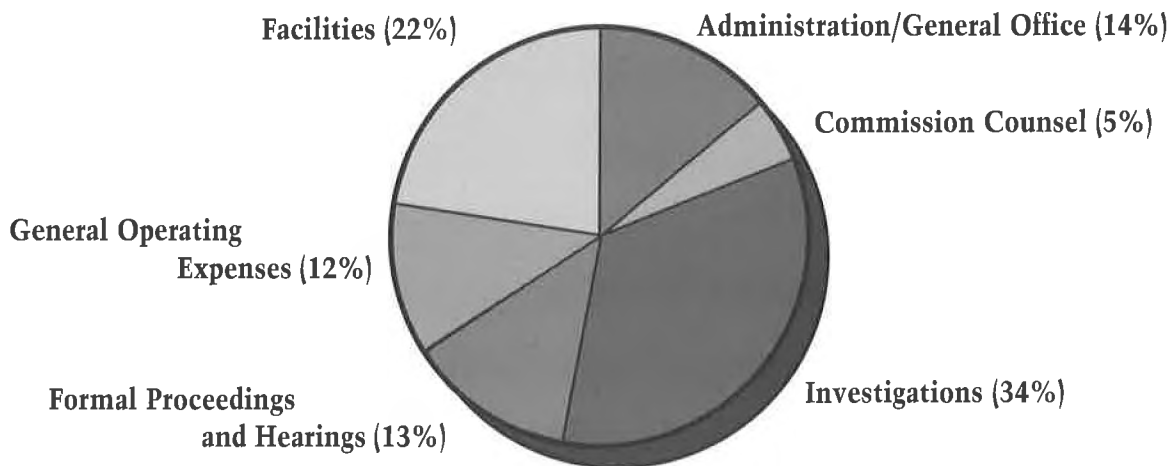
BUDGET

The Commission's budget is separate from the budget of any other state agency or court. For the 2000-2001 fiscal year, the Commission's budget allocation is \$3,704,000.

During the 1999-2000 fiscal year, approximately 34% of the Commission's budget supported the intake and investigation functions of the Commission and approximately 18% of the Commission's budget was used in connection with formal proceedings. The remaining 48% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.

**COMMISSION ON JUDICIAL PERFORMANCE
1999-2000 BUDGET EXPENSES**

\$3,515,548 (Actual Expenditure)



APPENDIX 3.

10-YEAR SUMMARY OF COMMISSION ACTIVITY

NEW COMPLAINTS CONSIDERED BY COMMISSION

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
	744	966	950	997	1,263	1,187	1,183	1,125	1,022	951

COMMISSION INVESTIGATIONS COMMENCED

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Staff Inquiries	109 (15%)	136 (14%)	121 (13%)	120 (12%)	163 (13%)	114 (10%)	132 (11%)	122 (11%)	74 (7%)	92 (10%)
Preliminary Investigations	33 (4%)	15 (2%)	35 (4%)	51 (5%)	64 (5%)	60 (5%)	65 (5%)	65 (6%)	30 (3%)	36 (4%)
Formal Proceedings Instituted	6 (1%)	2 (<1%))	9 (1%)	14 (1%)	4 (<1%))	8 (1%)	5 (<1%))	6 (<1%))	4 (<1%))	3 (<1%))

DISPOSITION OF COMMISSION CASES *

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Total Dispositions	712	975	930	940	1,213	1,176	1,174	1,088	1,059	934
Closed after Initial Review	621 (87%)	827 (85%)	809 (87%)	834 (89%)	1,053 (87%)	1,024 (87%)	1,001 (85%)	950 (87%)	929 (88%)	835 (89%)
Closed without Discipline after Investigation	48 (7%)	93 (10%)	79 (8%)	53 (6%)	94 (8%)	102 (9%)	114 (10%)	71 (7%)	86 (8%)	64 (7%)
Advisory Letter	29 (4%)	40 (4%)	26 (3%)	41 (4%)	41 (3%)	34 (3%)	42 (4%)	53 (5%)	30 (3%)	19 (2%)
Private Admonishment	9 (1%)	11 (1%)	7 (1%)	6 (1%)	7 (1%)	4 (<1%))	10 (1%)	3 (<1%))	3 (<1%))	6 (<1%))
Public Admonishment (or Reproval)	0 (0%)	3 (<1%))	2 (<1%))	3 (<1%))	6 (<1%))	3 (<1%))	4 (<1%))	7 (<1%))	4 (<1%))	6 (<1%))
Public Censure (by Supreme Court or Commission)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	1 (<1%))	4 (<1%))	1 (<1%))	2 (<1%))	3 (<1%))	1 (<1%))
Removal	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2 (<1%))	0 (0%)	0 (0%)	0 (0%)	1 (<1%))	0 (0%)
Judge Resigned or Retired with Proceedings Pending	5 (1%)	1 (<1%))	7 (1%)	3 (<1%))	9 (1%)	5 (<1%))	2 (<1%))	2 (<1%))	3 (<1%))	3 (<1%))

*See footnote 2 at page 12.